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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

GREGG HANSEN,

Plaintiff and Appellant,

v.

DOROTHY COURNALE, as Trustee, etc.

Defendant and Respondent.

A155436, A155437

(Marin County
Super. Ct. No. 1701583)

On August 15, 2018, plaintiff Gregg Hansen was ordered to pay \$2,275 in sanctions for his failure to respond to defendant's request for production of documents. On September 18, judgment was entered in favor of defendant after plaintiff failed to appear for trial. On September 20, plaintiff timely filed separate notices of appeal from the sanction order and from the judgment.

In his appeal from the judgment (A155437), plaintiff elected to proceed with an appendix per rule 8.124 of the California Rules of Court and without a reporter's transcript. Plaintiff's appeal from the sanction order (A155436) was initially dismissed based on his failure to timely designate the record but was reinstated in January 2019. At that time, we consolidated the two appeals for all purposes and advised plaintiff that he may also proceed by appendix in appeal A155436. Plaintiff was further advised that the appendix was due within 40 days and that it must comply with rules 8.120 et seq. and 8.200 et seq. of the California Rules of Court. On March 4, plaintiff timely filed opening briefs in both appeals but failed to file an appendix. Accordingly, the record before us includes only the sanction order and the judgment that were attached to the notices of appeal.

The sanction order reads in relevant part, “Plaintiff is wholly capable of responding to the rather simple discovery requests at issue here, and has entirely failed to comply with his obligations. Defendant and defendant’s counsel have been more than fair, suggesting at the most recent case management conference that they would take this motion off calendar with plaintiff’s agreement to comply with his obligations. Plaintiff declined to agree.” The judgment indicates that the matter was resolved on defendant’s motion for nonsuit after plaintiff failed to appear.

On appeal, plaintiff contends that he was sanctioned because the settlement conference judge was angry that plaintiff would not settle and because he violated a court order by bringing his service dog into the courtroom. He contends that the judgment should be reversed because he was in the hospital at the time of trial. He asserts that before trial, he “contacted everyone [he] could to inform them of the situation” and that he asked defendant’s attorney “to read a statement if [plaintiff] was not there and [defense counsel] has never responded if he did or did not.”

A fundamental rule of appellate review is that the judgment or order is presumed to be correct. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) To overcome this presumption, an appellant carries the burden of providing this court with an adequate record to affirmatively demonstrate prejudicial error by the trial court. (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) Here, the appellant’s failure to provide an adequate record makes it impossible to overcome the presumption of correctness necessary to secure a reversal of the trial court’s order or judgment. Moreover, before filing his appeal from the judgment, plaintiff apparently failed to seek relief in the trial court on the ground he asserts here, that his hospitalization prevented him from appearing at trial. Accordingly, we shall affirm the sanction order and judgment.

Disposition

The sanction order and judgment are affirmed. Defendant shall recover her costs on appeal.

POLLAK, P. J.

WE CONCUR:

STREETER, J.

BROWN, J.

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